

WYŻSZA SZKOŁA GOSPODARKI EUROREGIONALNEJ IM. ALCIDE DE GASPERI W JÓZEFOWIE



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**THE HUMAN RIGHT TO EDUCATION
AND REMOTE LEARNING**

ABSTRACT

The article discussed the problem resulting from the Covid 19 pandemic faced by the academic and teaching community around the world. However, this applies to the perspective of the human rights of the student who received education during this period.

During the lockdown, educational institutions and universities had to start remote learning. This obviously translates into the implementation of human rights. The need for action by states was indicated to ensure real opportunities for such people to complete their education through a system of free supplementary studies.

INTRODUCTION

The article concerns the current problem resulting from the Covid 19 pandemic faced by the academic and teaching community around the world.

During the lockdown, educational institutions and universities had to start remote learning. This obviously translates into the implementation of human rights. The most intuitive human right that has been violated is the human right to education. However, it has a double dimension^[1]. On the one hand, it is about the right to education and, on the other hand, it is about freedom of research. Clearly, the article is about the right to education. Of course, the pandemic and the related restrictions also affected teachers and research opportunities. The implementation of the teacher's human rights obviously translates into the quality of the student's right to education. However, this analysis is concerned only with the student's perspective.

It should be reminded that a human right is a sphere, in which a person can exercise his freedom as a sphere of ability to act, entitlement or competence, and in this case the state must act actively and ensure the protection of the

^[1]In international law texts, special attention should be paid to translations. For example, in Polish, one phrase means both the right to education and research. A similar problem also arises with the translation of the Charter of Fundamental Rights and other international documents, see more on A. Drozd, *The application of human rights in the face of language differences of the same normative texts in different language versions* [in:] *The EU system of human rights protection against contemporary challenges*, ed. E. Krzysztofik, M. Maksymiuk, D. Tarczyński, Lublin 2022, p. 104-115.

law by creating norms in positive law. Therefore, a human right is a kind of freedom, entitlement or competence for the implementation of which an individual has the right to demand protection and its provision by the state. Every right, including a human right, contains *bundles of rights* that make up this right. Determining the partial bundles of human rights as: 1) spheres of ability to act, 2) rights, 3) competences allows one definition to include all types of specific partial rights that make up a specific human right^[2].

In the case of the right to education, we are dealing with a right. Of course, after effective *learning*, the knowledge and the powers that it can give will take the form of competences, e.g. attorney's competence, gynecological competences, judicial competence. At the stage of education, however, it is only an entitlement.

There is also the question of why the right to education is protected. The answer is the need to protect the inherent human dignity.

As an introduction, it should be pointed out that human dignity is the source of human rights^[3], so it is also the source for the principles of this

^[2] Thus, a human right is an area in which a person can exercise their freedom understood as a possibility to act, or having a certain right or a competence, and the state in this case must take actions and ensure the protection of the right by creating norms in positive law. A human right is therefore a type of freedom, right or competence for the exercise of which an individual is entitled to demand protection and expect that it will be ensured by the state. Every right, including a human right, contains 'bundles of entitlements' that make up that right. Defining the constituent bundles of human right entitlements as: 1) the possibility to act, 2) entitlements, 3) competence, makes it possible to include in a single definition all the types of specified constituent entitlements that make up a specific human right. M. Skwarzyński *Definition of human rights* [in:] *International Human Rights Law*, K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, Warszawa Beck 2023, p. 12, pt. 36.

^[3] More on personal and personality dignity, see: K. Orzeszyna, *Godność jako źródło praw człowieka* [in:] *Prawo Międzynarodowe Praw Człowieka*, ed. K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, Warszawa C.H. Beck 2022, p. 24-35; K. Orzeszyna, *Godność ludzka podstawą praw człowieka*, [in:] *Człowiek – jego prawa i odpowiedzialność*, ed. R. Tabaszewski, p. 23; J. Krukowski, *Godność człowieka podstawą konstytucyjnego katalogu praw i wolności jednostki* [p:] *Podstawowe prawa jednostki i ich sądowa ochrona*, red. L. Wiśniewski, Warszawa 1997, p. 39-42; W. Jedlecka, J. Policiewicz, *Pojęcie godności na tle Konstytucji RP* [in:] *Z zagadnień teorii i filozofii prawa. Konstytucja*, ed. A. Bator, Wrocław 1999, p. 146; J. Zajadło, *Godność jednostki w aktach międzynarodowej ochrony praw człowieka*, RPEiS, n 2/1989, p. 111; K. Complak, *Uwagi o godności człowieka oraz jej ochrona w świetle nowej konstytucji*, Psej 5/1998, p. 42; Z. Hołda [in:] *Prawa Człowieka, Zarys wykładu*, ed. Z. Hołda, D. Ostrowska, J. Hołda, J. A. Rybczyńska, Warszawa 2014, p. 12; M. Piechowiak, *Filozofia praw człowieka. Prawa człowieka w świetle ich międzynarodowej ochrony*, Lublin 1999, p. 343-347; F. J. Mazurek, *Godność osoby ludzkiej podstawą praw człowieka*, Lublin 2001, p. 75-80. Jan Paweł II, *Moralna struktura wolności podstawą nowej kultury wolności*, ETHOS 1999, n 1-2, p. 13; see: J. Krukowski, *Zasada*

system. It should be repeated that *one of the scientific claims of Karol Wojtyła was the indication that the truth has the power to determine as well as create moral norms. Developing this thought, it should be stated that, since human dignity expressed in the normative system of human rights emphasises the truth about man himself, it has the power to determine and create norms of a lower order. This emphasis on dignity and measures to protect it 'give power' to human rights. If human rights do not express this manifest truth about man and do not protect dignity, but become a political, social or purely formal legal postulate, they become devoid of this 'power' and no longer offer effective protection to the individual*[4]. The system of human rights directly draws from dignity, refers to it and points to it as its source. Looking purely normatively, *the human rights system serves as a normative expression of human dignity, but it is dignity that is primary to the normative system and is independent of it. The legal system only declares the protection of dignity, but does not constitute it. The difference between the human rights system under international law is that treaties, as international agreements, create something. In the system of human rights, dignity is primary, and the normative system is secondary*[5]. The consequence is also that it is dignity that enforces the application of human rights as *ius cogens* of public international law, and it basically uses the deductive (and not inductive^[6]) method and enforces further specific rules, including the so-called the concept of the margin of appreciation^[7]. The human right to

poszanowania godności ludzkiej i prawa do życia w biomedycynie w prawie międzynarodowym, [in:] *Ius et Lex, Księga Jubileuszowa ku czci Profesora Adama Strzembosza*, (ed.:) A. Dębiński, A. Grześkowiak, K. Wiak, Lublin 2002, p. 488.

[4] For more see: M. Skwarzyński *Definition of human rights* [in:] *International Human Rights Law*, K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, Warszawa Beck 2023, p. 11, pt. 34; K. Wojtyła, *Osoba i czyn*, Kraków 1969, *passim*.

[5] M. Skwarzyński; *Zasady stosowania praw człowieka w orzecznictwie ETPCz i TSUE* [in:] *Unijny system ochrony praw człowieka wobec współczesnych wyzwań* red. E. Krzysztofik, M. Maksymiuk, D. Tarczyński, Lublin 2022, p. 199; M. Skwarzyński [in:] *International Human Rights Law*, K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, Warszawa Beck 2023, p. 52.

[6] K. Orzeszyna, *Human rights and public international law* [in:] *International Human Rights Law*, K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, Warszawa Beck 2023, p. 16, pt. 46.

[7] M. Skwarzyński, *Zasady stosowania...* p. 200-205; M. Skwarzyński, *Domestic system of human rights protection* [in:] *International Human...* p. 135.

education^[8], thus expanding one's competences and horizons of acquiring knowledge, is one of the features that distinguishes humans from animals. It therefore seems that this right is particularly closely related to human dignity.

1. CHARACTERISTICS OF THE HUMAN RIGHT TO EDUCATION IN THE SYSTEM OF INTERNATIONAL LAW

The right to education is an established human right. It should be emphasized that the main international source is Art. 2 of Protocol No. 1^[9] to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Paris on March 20, 1952^[10], the human right to education is included^[11]. It is related to the human right to culture and development, which can be seen in art. 13^[12] of the International Covenant on Economic, Social and

^[8] For more see: M. Sitek, *Prawa (potrzeby) człowieka w ponowoczesności*, Warszawa 2016, p. 286-296.

^[9] Art. 2 Right to education: No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

^[10] Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Paris on 20 March 1952

^[11] See: L. Garlicki, *Komentarz do art. 2 Protokołu 1 EKPC*, [in:], *Konwencja o ochronie praw człowieka i podstawowych wolności. Komentarz do artykułów 19-59 oraz Protokołów dodatkowych*, L. Garlicki (ed.), Warszawa 2010, pt 2

^[12] Art. 13: 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The

Cultural Rights, opened for signature in New York on December 19, 1966^[13]. Its content consists in providing everyone with an opportunity to education, which cannot be limited, and thus the development of knowledge, but also culture, without which it is impossible to understand society (art. 15 ICESCR). No limitation of the human right to education by the limiting clause in Art. 2 of Protocol 1 to the ECHR is determined by the fact that in Europe the human right to education is a first-generation human right^[14].

In other words, the human right to education, in accordance with Art. 2 of Protocol 1 of the ECHR is real and effective^[15] and the state must act actively

development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. 3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

^[13] International Covenant on Economic, Social and Cultural Rights open for signatures on 19 December 1966 in New York, hereinafter as: ICESCR.

^[14] For more on generations of human rights, see: K. Vasak, *A30-year struggle The sustained efforts to give force of law to the Universal Declaration of Human Rights*, *The UNESCO Courier: a window open on the world*, n 11/1977, p. 29, 32; K. Vasak, *Human Rights: As a Legal Reality* [in:] *The International dimensions of human rights*, red. K. Vasak, UNESCO, Paryż, Westport, 1982, p. 3-9; K. Vasek, *Part II: International Institutions for the protection and promotion of human rights. The Distinguishing Criteria of Institutions*, [in:] *The International...*, p. 215-230; K. Vasak, *Sub-part II: Regional Institutions for the promotion and protection of human rights. Introduction* [in:] *The International...*, p. 451-456; K. Vasak, *Sub-part II: Regional Institutions for the promotion and protection of human rights. The Council of Europe* [in:] *The International...*, p. 457-542; M. Piechowiak, *Filozofia praw człowieka*, Lublin 1999, p. 74-76; S. Ruchała, *Współczesne filozoficzne spory o ugruntowanie praw człowieka*, Rozprawa doktorska napisana pod kierunkiem prof. dra hab. Kazimierza Ślęczki, Katowice 2006 r. Uniwersytet Śląski w Katowicach Wydział Nauk Społecznych Instytut Filozofii p. 93 – 129, available on the site: <http://www.sbc.org.pl/Content/4445/doktorat2680.pdf> on July 27, 2023; B. Banaszak, *Ogólne wiadomości o prawach człowieka. Geneza praw człowieka i ewolucja systemów ich ochrony*, [in:] *Prawa i wolności obywatelskie w Konstytucji RP*, ed. B. Banaszak, A. Preisner, Warszawa 2002, p. 29; P. Kowalski, *Nowe prawa człowieka perspektywy i zagrożenia*, RPEiS, nr 2/1988, p. 58.

^[15] See: T. Jasudowicz, [in:] *Prawa człowieka i ich ochrona – podręcznik dla studentów prawa i administracji*, T. Jasudowicz (ed.), B. Gronowska, M. Balcerzak, M. Lubiszewski, R. Mizerski,

in protecting it. The state must therefore ensure the implementation of the law by creating norms in positive law. After all, in this case, a human right is a type of right for which an individual has the right to demand protection and its provision by the state. This is expressed through the entire educational law system and the higher education law system. Detailed solutions regarding access to each stage of education are also included. There are detailed rights of pupils and students, which, after all, implement the human right to education.

In the Polish legal order, the right to education is also universal – Art. 70 sec. 1 sentence 1 of the Constitution of the Republic of Poland, the phrase *everyone has the right to education*^[16]. Such wording determines a given right as a constitutional human right^[17]. This right is also found in Art. 13 ICESCR where, however, it is a second-generation law.

It should also be pointed out that the Charter of Fundamental Rights of the European Union of December 7, 2000, which in Poland seems not to be a direct source of law, because in accordance with Protocol No. 30 annexed to the Treaty of Lisbon – Art. 1 sec. 1 – its content cannot be effectively invoked towards Poland and the United Kingdom^[18]. The view expressed in the literature is that *the standards contained in the Charter of Fundamental Rights of the European Union in Poland are binding, either as constitutional standards or as international standards applicable to us*^[19], which means that

Toruń 2005, p. 379; this conclusion also seems to follow from the analysis L. Garlicki, *Komentarz do art. 2 Protokołu 1 EKPC*, [in:], *Konwencja o ochronie praw człowieka...*, op. cit., pt 2

[16] See: O. M. Rudak, *Prawo do nauki*, [in:] *Prawa i wolności obywatelskie w Konstytucji RP*, B. Banaszak, A. Preisner (ed.), Warszawa 2002, p. 493.

[17] See: B. Banaszak, *Ogólne wiadomości o prawach człowieka. Geneza praw człowieka i ewolucja systemów ich ochrony*, [in:] *Prawa i wolności...*, op. cit., p. 27, the same for Art. 73 of the Constitution of the Republic of Poland – the right to creative freedom – argues J. Sobczak, *Wolność ekspresji artystycznej. Standardy europejskie i rzeczywistość polska*, [in:] *Rada Europy, a przemiany demokratyczne w państwach Europy Środkowej i Wschodniej w latach 1989-2009*, J. Jaskiernia (ed.), Toruń 2010, p. 612.

[18] See: A. Wyrozumka, *Ochrona praw podstawowych w Unii Europejskiej*, [in:] *Obywatel Unii. Tom VI Traktat z Lizbony*, I. Skomerska – Muchowska, A. Wyrozumka, Warszawa 2010, p. 219; K. Kowalik – Bańczyk, *Konsekwencje przyjęcia protokołu polsko-brytyjskiego dotyczące stosowania Karty Praw Podstawowych*, [in:] *Karta Praw Podstawowych w europejskim i krajowym porządku prawnym*, ed. A. Wróbel, Warszawa 2009, p. 136 – 138.

[19] R. Wieruszewski, *Postanowienia Karty Praw Podstawowych w świetle wiążących Polskę umów międzynarodowych i postanowień Konstytucji RP z 1997 r.*, [in:] *Ochrona praw podstawowych w Unii Europejskiej*, ed. J. Barcz, Warszawa 2008, p. 143.

they are not directly binding, but indicate the direction of development – the concretization of human rights. In this context, art. 13 of the CFR, specifying the freedom of art and science, which it protects through the content of the provision according to which *The arts and scientific research shall be free of constraint. Academic freedom shall be respected..* Whereas art. 14 of the CFR expressly defines the right to education. It is similar in art. 26 of the Universal Declaration of Human Rights.

2. THE RIGHTS OF THE LEARNER, AS THE RIGHTS RESULTING FROM THE HUMAN RIGHT TO EDUCATION, IMPLEMENTING THE HUMAN RIGHT TO DEVELOPMENT AND THE HUMAN RIGHT TO RESPECT FOR ONE’S PROPERTY

The right to education determines the existence and implementation of other human rights. These are essentially the human right to development and the human right to respect for one’s property. In Art. 15 sec. 1 letter b and sec. 2, 3 and 4 of the ICESCR define the existence of the human right to development. Therefore, it should be assumed that Art. 15 ICESCR is the source of the human right to take advantage of the benefits of scientific progress and its applications^[20]. It should be pointed out that the right of society to development can be found already in art. 1 ICESCR, which speaks of the nation’s right to economic, social and cultural development. This obviously affects the interpretation of the right to education as a right implementing the development of individuals and thus the development of the entire society and the international community^[21].

^[20] A. R. Chapman, *A human rights perspective on intellectual property, scientific progress, and access to the benefits of science*, www.wipo.int/tk/en/hr/paneldiscussion/papers/pdf/chapman.pdf, access on 27 July 2023, points 2 (ii) and point 2 (iii) a, which sets out three elements of the right of everyone to: access to scientific and technological achievements; to decisions and priorities in the field of technological and scientific development; to protect against the negative effects of scientific and technical progress, similarly: M. K. Kolasinski, *Ochrona własności intelektualnej a prawa człowieka*, *Kwartalnik Prawa Prywatnego*, n 3/2008, p. 745.

^[21] Article 1: 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural

Scientists obviously use a wider range of freedom of speech, which applies not only to the publication of scientific research^[22], but also to the freedom to teach their students, where the freedom of the teacher allows them to exercise their right to education.

The right to education is so important that discrimination in access to education is combated internationally, and the Convention against Discrimination in Education of December 15, 1960, which entered into force on May 22, 1962, is dedicated to this^[23].

Related to this is the so-called the criterion of ability resulting from the human right to science resulting from art. 2 of the Constitution of the Republic of Poland in connection with art. 70 sec. 1 sentence 1 and sec. 4 of the Constitution of the Republic of Poland, in connection with art. 2 sentences 1 of Protocol 1 of the ECHR in connection with art. 13 sec. 2 letter c and e ICESCR in connection with the Convention on combating discrimination in the field of education drawn up in Paris.

State authorities are obliged to ensure its full implementation in every aspect, including economic, this problem is widely discussed in the field of the right to human health^[24]. The fact of the first-generation nature of the right to education is dominant in the doctrine^[25], as well as it results from the jurisprudence^[26] of the ECtHR and theses of commentators^[26].

development. 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

^[22] See: M. Skwarzyński, *Podmiotowe granice wolności słowa w wypowiedziach publicznych*, Prawo w Działaniu 48/ 2021, p. 265.

^[23] Convention against Discrimination in Education of 15 December 1960, which entered into force on 22 May 1962

^[24] See: Judgment of the Constitutional Tribunal of Poland of March 23, 1999, case no. K 2/98, OTK 1999/3/38, LEX No. 36396

^[25] It says, for example: T. Jasudowicz [in:] ed. T. Jasudowicz, *Prawa człowieka i ich ochrona – podręcznik dla studentów prawa i administracji*, Toruń 2005, p. 379.

^[26] This is what seems to be said, for example, by former ECtHR Judge L. Garlicki, L. Garlicki, *Komentarz do art. 2 Protokołu 1 EKPCZ*, pkt. 2, in: (ed.) L. Garlicki, P. Hofmański, A. Wróbel,

Since there is such a human right, it results from international agreements ratified by Poland, it is an element of our legal system. The scope of this right, in turn, results from art. 13 ICESCR, where the legislator clarified them, in relation to Art. 2 sentences 1 of Protocol 1 ECHR.

It should be pointed out that Art. 13 sec. 2 letter c ICESCR stipulates that higher education will be equally accessible to all on the basis of ability. Reading the provisions defining the human right to education shows the emphasis on equal access to it. The above means that access to education may be differentiated according to the substantive criterion. If it is access to higher education, that criterion is the criterion of ability. The same applies to access to legal applications, specialization in medical professions, etc.

As the human right to property is also a first-generation human right in Europe, the European Court of Human Rights in Strasbourg stated that within the scope of Art. 1 of Protocol 1, the ECHR includes the right to practice as a lawyer and his clients, thus this right includes the human right to access the legal profession. The clientele itself is protected as an element of its property^[27]. The European Court of Human Rights indicated that the subject of protection of Art. 1 sec. 1 of Protocol 1 of the ECHR is the loss of clients due to the liquidation of the enterprise, the possibility of having clients in the context of (over)regulation of the economy, the possibility of acquiring clients by representatives of the legal and medical professions^[28].

The best-known case is *Van Marle and Others v. the Netherlands*^[29], which concerned the disqualification of entry on the list of accountants, where the ECtHR granted protection to the applicants under Art. 1 sec. 1 of Protocol 1 to the ECHR, in terms of client protection. Interesting are the considerations of the ECtHR in the case of *Doustaly v. France*, where the Court against the

Konwencja o ochronie praw człowieka i podstawowych wolności. Tom II. Komentarz do artykułów 19–59 oraz Protokołów dodatkowych, Warszawa 2010.

^[27] See Judgment of the ECtHR of June 26, 1986, in the case of *Van Marle et al. v. the Netherlands*, complaint no. 69498/01 8543/79; 8674/79; 8675/79; 8685/79.

^[28] Judgment of the European Court of Human Rights of January 11, 2007 in the case of *Anheuser-Busch Inc. v Portugal* (application no. 73049/01), <http://hudoc.echr.coe.int>.

^[29] Judgment of the European Court of Human Rights of 26 June 1986 in the case of *Van Marle and others v. the Netherlands* (applications nos. 8543/79, 8674/79, 8675/79 and 8685/79), <http://hudoc.echr.coe.int>.

applicant who suffered significant financial losses. He submitted that the courts should have considered the case with particular care, given that the claim had been related to his professional activities. These losses were largely due to the prolonged failure of the public authorities to define his rights, which had an indirect detrimental effect on his ability to maintain a clientele and to stay in his profession^[30]. On the other hand, the issue of the nature of the right to a clientele was the subject of the Court's consideration in the case of *H. v. Belgium*^[31], and it is interesting because it concerns^[32] the activity of a lawyer. As emphasized by M. A. Nowicki, in this sense, striking off the list of advocates is, under certain conditions, a violation of the principle of respect for property, as it deprives the advocate of the clientele he has acquired and already possessed. While recognizing the damage, the Court noted that there is a lawyer's right to a clientele^[32], as a set of interests of a pecuniary nature, which as such falls within the meaning of the notion of ownership and is protected by the Convention.

This is important because it is a truism to say that access to highly specialized education – legal, medical – determines the professional fate of a person and his financial status. Limiting the human right to science blocks its development, but also blocks its possibilities of economic development, which are determined by knowledge.

It should be stated that the Convention against Discrimination in Education, drawn up in Paris on 15 December 1960, for obvious reasons, also protects persons at risk of discrimination on the grounds of origin, sex and other non-substantive grounds (Article 1). The Convention is binding on States (Article 3) and States parties can bring a ruling to the International Court of Justice in the event of a breach of its provisions by another party (Article 8).

^[30] Judgment of the European Court of Human Rights of 23 April 1998, *Doustaly v. France* (Application No. 26256/95), <http://hudoc.echr.coe.int>.

^[31] Judgment of the European Court of Human Rights of 30 November 1987, *H. v. Belgium* (Application No. 8950/80), <http://hudoc.echr.coe.int>.

^[32] M. A. Nowicki, *Europejski Trybunał Praw Człowieka. Orzecznictwo. Tom II. Prawo do życia i inne prawa*, Kraków 2002, p. 1295.

3. THE SPECIFICITY OF REMOTE LEARNING AND THE POSSIBILITIES OF OBTAINING SPECIALIST KNOWLEDGE

The Covid 19 pandemic has led to the physical closure of schools and universities. There has been an extreme shift of education to communication platforms at both school and university levels^[33]. The same has happened in law apprenticeships and largely in medical education. If at the level of school or general education it does not determine serious damage to the student, then a problem arises with highly specialized education.

Education at the early school and secondary education level seems possible to be implemented remotely. It is mainly theoretical knowledge, and the practical part does not require specialized equipment, manual work, laboratory work, etc.

However, the situation is different with technical and vocational education, which requires practice^[34], and with highly specialized higher education. Medicine and its specializations as well as legal education and legal applications can undoubtedly be considered such.

After all, practice is key in these professions. Of course, this could not mean giving up teaching in the era of a pandemic. This could not mean abandoning remote learning. However, the practice of legislators who do not want to see this problem cannot be accepted. There are professions and fields of education or studies that can be completed remotely. But there are also those where, without a practical element, education cannot provide competence at the appropriate level.

Remote learning cannot give practical competence in many areas. Just like in many areas, it will absolutely work.

The right to education and development obviously allows for a situation where someone completes studies, e.g. geology, oenology, etc., for the pursuit of a hobby. Basically, however, they choose a profession based on the criterion of ability in order to obtain competences for professional work. Do these people have equal opportunities with people who exercised the human

^[33] For more see: I. Florek, *Administracja w szkole wyższej w dobie pandemii*, [in:] *Funkcjonowanie administracji publicznej w okresie pandemii COVID-19*, ed. Elżbieta Ura, Rzeszów 2022, p. 170-173.

^[34] It should be noted that not everyone is like this. Even if education in the field of gastronomy could be successfully conducted at home, it is hard to imagine such education for a car mechanic.

right to education in the times before or after the pandemic? The answer is obvious and one can be tempted to say that these people can be considered discriminated against.

The question arises whether states have taken responsibility for people learning remotely during the pandemic in the field of practical professions through no fault of their own. States, as indicated above, have such an obligation. These human rights are effective and have an impact on the country's legal system.

SUMMARY

As indicated, the human right to education in fact implements two more human rights to development and respect for one's property in the field of professional competence. It is unacceptable to accept the actions of the legislator who, knowing that there are highly specialized professions that require a lot of theoretical knowledge, but in the basic dimension of practical knowledge, after the end of the pandemic, does not provide for any possibility of supplementing this knowledge.

Of course, the scope of this supplement is different for professions in vocational or technical schools, although it will be proportionally higher when it comes to higher vocational schools and polytechnics. But it is obvious that these students should be organized with a supplementary education system.

It is the same with higher education, where it seems justified to create complementary free studies, allowing to make up for the differences between remote and stationary teaching. This is especially necessary in the legal professions and medicine. This applies to studies as well as specializations. The public rightly accepted the decision of the state authorities to lockdown. But this decision cannot be left in a vacuum. Societies, in their own interest, should create mechanisms so that people who acquire key professional competences can have them based on reliable knowledge.

It is important not to limit the rights of graduates, but to create systemic conditions to make up for the times of the pandemic. Education cannot take place without responsibility for the future of a young person who wanted to be educated and acquire competences.

It is necessary to postulate the creation of supplementary studies, probably in the form of extramural studies, which will enable willing graduates to acquire competences. At the same time, the state should take on the financial burden of these studies to equalize the chances of those who studied during the pandemic.

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